Lear-Siegler Management Service Corporation, a wholly owned subsidiary of Aerospace Products Holding Corp. *and* International Brotherhood of Teamsters, AFL–CIO, Local 528.[1] Case 10–CA–23677

February 26, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On September 28, 1990, Administrative Law Judge Robert A. Gritta issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Respondent filed a brief opposing the General Counsel's exceptions. The General Counsel filed a motion to strike the Respondent's answering brief in part, and the Respondent filed a brief opposing the General Counsel's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

1. The judge found, and we agree, that the September 1988 speech by the Respondent's director of administration and industrial relations, Roosevelt Camp, violated Section 8(a)(1) of the Act. Camp testified that he read the speech verbatim from a written text, which was submitted in record evidence as a Respondent's exhibit. The pertinent portions of the text relating to benefits and wages if the Union were to be voted in state:

> Our present benefit package is for employees who are not under union contract. The company currently provides medical, dental, optical, retirement, and life insurance benefits without union representation or union dues. Has the union promised you or your family a better benefit package? Under the union all benefits would have to be negotiated, *starting from zero*. [Emphasis added.]

Although the General Counsel's witnesses differ over whether Camp read the speech or spoke extemporaneously,[2] the testimony of some of these witnesses as to what Camp said during the speech is not inconsistent with the text of the written speech that Camp testified to reading. Specifically, witness Medra Gorman Stanfield testified that: ''Well, I remember him saying that if the Union did come in, that everybody would start from zero. And I don't recall quite understand that. I guess—I guess salary wise, I don't know.'' Another witness, Allen B. Johnson, testified: ''He was saying stuff like, when a union comes in here that all wages and all our benefits would be null'' and later, ''The best I can remember, just about everything, as far as benefits, and wages, and everything, would have to be renegotiated. We would have to start from, you know, the bottom.'' Further, witness Emory Gregory Spears testified: ''That we would lose what our wages—our wages and insurance now would go to just flat zero, and the company and the Union would have to negotiate on what we got per hour, and our insurance benefits'' and later, ''That it would start at zero. All our insurance and wages would be wiped completely out, and then they would start.''

The standard for determining whether statements of this type violate Section 8(a)(1) of the Act is set out in *Taylor-Dunn Mfg. Co*., 252 NLRB 799, 800 (1980), enfd. 810 F.2d 638 (9th Cir. 1982), as follows:

> It is well established that ''bargaining from ground zero'' or ''bargaining from scratch'' statements by employer representatives violate Section 8(a)(1) of the Act if, in context, they reasonably could be understood by employees as a threat of loss of exisiting benefits and leave employees with the impression that what they may ultimately receive depends upon what the union can induce the employer to restore. On the other hand, such statements are not violative of the Act when other communications make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations.[3]

Applying this standard to the facts here, we find it clear from both the text of Camp's speech and the General Counsel's witnesses' description of the speech that statements indicating that benefits would start from zero could reasonably have been understood as a threat of loss of existing benefits. No other statements regarding the normal give-and-take of collective-bargaining negotiations were made by Camp. Accordingly, we adopt the judge's finding that Camp's speech violated Section 8(a)(1) of the Act.

2. The judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Mack Wood. He declined, however, to recommend that Wood be awarded reinstatement and backpay, relying on certain postdischarge misconduct. The General Counsel has excepted. We adopt the judge's recommendation to deny reinstatement, although we do so for different reasons, and we modify

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The judge found that Camp did depart from the written text when making the speech to the assembled employees.

[3] See also *Telex Communications*, 294 NLRB 1136 (1989); *Kenrich Petrochemicals*, 294 NLRB 519 (1989); and *S. E. Nichols, Inc*., 284 NLRB 556, 577 (1987).

his recommendation to deny all backpay. We grant backpay to Wood, but toll it as of the date of his postdischarge misconduct discussed below.

Discriminatee Wood believed that employee Sumlin, a witness in the instant case, would give testimony that was favorable to Wood's case against the Respondent. The record shows that Sumlin's testimony related to his knowledge of the Respondent's reprimand policy and its application, and that this testimony was objectively favorable to Wood. Wood, who had a reputation for disruptive and violent conduct, threatened Sumlin that he would report a violation of Sumlin's probation[4] if Sumlin changed his anticipated testimony at the hearing. This threat occurred after Wood heard a rumor that Sumlin was going to testify in a manner that Wood believed to be untruthful about the policy and its application and thus unfavorably to Wood. The record also establishes that Sumlin took Wood's threat seriously and, as the judge noted, Sumlin was ''visibly shaken while testifying.''

In assessing Wood's remarks, we agree with the judge that threats to induce a witness to testify in a certain way in a Board proceeding constitute serious conduct. The integrity of the Board's judicial process depends on witnesses telling the truth, as they see it, without fear of reprisal or promise of reward. That integrity was compromised when Sumlin was threatened with reprisal if he changed his anticipated testimony. It makes no difference that Wood may have believed that he was seeking to ensure true testimony as he saw it. The essential point is that persons should not *threaten* potential witnesses, even if it be in the name of ensuring supposedly truthful testimony. Sumlin, and any other witness in a Board proceeding, should be free to testify to the truth, without fear of reprisal, as they see the truth. It is then the role of the judge and the Board to determine whether the testimony is true or false.

In the instant case, unlike the judge, we find that Wood should receive backpay, but that it should be tolled as of the date of his threat to Sumlin. In so finding, we note that this remedy strikes a balance between the competing and equally important interests of protecting the Board's judicial processes and remedying unfair labor practices.[5] Denying backpay after the date of the threat protects the integrity of the Board's processes by providing that those who abuse the process cannot turn around and use the process to reap a full remedy. Granting backpay until that date also ensures that a respondent's unlawful discrimination does not go unremedied. Therefore, we hold that a discriminatee who interferes with the Board's processes by attempting to influence and manipulate a witness in a Board proceeding will forfeit his right to backpay beyond the date of the impermissible interference.

Although such interference with the Board's processes warrants the tolling of backpay rights, it does not alone warrant the denial of reinstatement.[6] Here, however, Wood not only attempted to manipulate Sumlin's testimony, he also accompanied that interference with a blatant threat of specific consequences to Sumlin's well-being, i.e., the threat to lodge an accusation with authorities that could threaten Sumlin's continuing probation. This threat from an employee like Wood, who had a reputation in the workplace as a violent and disruptive person,[7] was of a nature likely to produce in coworker Sumlin a continuing fear that any workplace disputes with Wood might result in a revival and possible implementation of the threat. In the unique circumstances of this case, we agree with the Respondent's contentions concerning Wood's fitness for return to the workplace and find that the potential for serious disruption warrants denying him reinstatement.[8]

Accordingly, we will toll Wood's backpay as of the date of his attempts to interfere with Sumlin's anticipated testimony at the hearing and will deny him reinstatement in order to eradicate any lingering effects of his threats to Sumlin.[9]

AMENDED REMEDY

We will order the Respondent to make whole Mack Wood for any loss of earnings and other benefits suffered as a result of the discrimination practiced against him, to be tolled as of the date of his threat to Gary

[4] Wood believed that he knew that Sumlin was violating the terms of his probation for possession of marijuana by being in a bar.

[5] Cf. *American Navigation*, 268 NLRB 426, 428 (1983); and *Ad Art, Inc*., 280 NLRB 985, 987 (1986) (when a discriminatee intentionally conceals interim earnings in a backpay proceeding, the Board balances its interest in protecting the intergrity of such a proceeding against its interest in remedying unfair labor practices) (Member Stephens, concurring).

[6] We overrule the dictum in *D. V. Copying & Printing*, 240 NLRB 1276 fn. 2 (1979), to the extent that it suggests that interference with the Board's processes (in that case, subordnation of perjury) alone, without accompanying threats, not only warrants tolling of backpay but also compels denial of reinstatement.

[7] We do not rely on the Respondent's contentions, and its affidavits proffered to the judge, concerning an alleged physical attack by Wood on Sumlin following the hearing in this case, because there has been no hearing on those allegations. See fn. 9, infra.

[8] See, e.g., *Fiber Glass Systems*, 278 NLRB 1255, 1266 (1986) (threatening coworker with gun); *NLRB v. Apico Inns of California*, 512 F.2d 1171 (9th Cir. 1975) (pattern of severe harassment of coworkers and customers, including serious sexual harassment).

[9] The Respondent's answering brief opposing the General Counsel's exceptions describes a motion to the judge to reopen the record for the purpose of taking evidence regarding an alleged posthearing exchange in which Wood allegedly physically assaulted Sumlin. The Respondent contends that the judge erroneously refused to reopen the hearing and to accept into evidence affidavits describing this exchange. The General Counsel has moved to strike in part any references to this posthearing exchange.

Because we have denied reinstatement and tolled backpay as of the date of Wood's prehearing threat to Sumlin, we find it unnecessary to pass on the General Counsel's motion because Wood's alleged posthearing misconduct would be immaterial to our decision and remedy.

Sumlin, such amounts to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Lear-Siegler Management Service Corporation, a wholly owned subsidiary of Aerospace Products Holding Corp., Warner Robins, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

''(a) Make whole Mack Wood for any loss of earnings he may have suffered as a result of the Respondent's discriminatory discharge, tolled from the date of his threat to Gary Sumlin, such amounts to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten any employees with economic reprisals because they engage in union activities.

WE WILL NOT threaten any employees with discharge because they engage in union activities.

WE WILL NOT discharge employees for engaging in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Mack Wood for any loss of pay he may have suffered by reason of the discrimination against him, tolled from the date of his threat to Gary Sumlin.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

LEAR-SIEGLER MANAGEMENT SERVICE CORPORATION, A WHOLLY OWNED SUBSIDIARY OF AEROSPACE PRODUCTS HOLDING CORP.

J. Howard Trimble, Esq., for the General Counsel.
W. Melvin Hass III, Esq. (Haynsworth, Baldwin, Miles, Johnson & Harper), of Macon, Georgia, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge. This case was tried before me on January 12 and 13, 1989, in Warner Robins, Georgia, based on a charge filed by Teamsters Local Union 528 (the Union) on September 22, 1988, and a complaint issued by the Regional Director for Region 10 of the National Labor Relations Board on November 3, 1988.[1]

The complaint alleged that Lear-Siegler, Inc. (Respondent or Lear) violated Section 8(a)(1) and (3) of the Act by threatening employees with economic reprisals for joining or assisting the Union and discharged an employee because of his membership in the Union. Respondent's timely answer denied the commission of any unfair labor practices.

All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by General Counsel and Respondent. Both briefs were duly considered.

On the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and on substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION AND STATUS OF LABOR ORGANIZATION—PRELIMINARY CONCLUSIONS OF LAW

The complaint alleges, Respondent admits, and I find Lear-Siegler, Inc. is a Delaware corporation engaged in the handling and delivery of freight on the Warner Robins Air Force Base in Warner Robins, Georgia. Jurisdiction is not in issue. Lear-Siegler, Inc., in the past 12 months, in the course and conduct of its business operations, purchased and received at its Warner Robins Air Force Base facility goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Georgia. I conclude and

[1] All dates are in 1988 unless otherwise specified.

find that Lear-Siegler, Inc. is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I conclude and find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FOREGROUND

The hearing in this matter closed January 13, 1989. After the hearing was closed Respondent, on February 7, 1989, filed a motion to reopen the record for the purpose of offering testimony of events occurring on January 25, 1989, following the representation election at the facility. Specifically, Respondent's concern was the posthearing conduct of the alleged discriminatee Wood.

On March 6, 1989, I denied Respondent's motion to reopen. Respondent's brief filed March 20, 1989, contained affidavits supporting the events of January 25, 1989, and a motion for reconsideration of the posthearing conduct of Wood.

I reaffirm my prior ruling denying Respondent's proffer of the evidence of the posthearing conduct and I shall not consider the affidavits attached to the brief.

Respondent's original motion and my order are received into the record as Court's Exhibits 1 and 2, respectively.

III. ALLEGED UNFAIR LABOR PRACTICES

Gary D. Sumlin testified he was employed by Lear in December 1984 as a shipping clerk. He is now a tractor-trailer operator in the shipping department. In July 1987, he received a reprimand for a verbal assault on Harrelson, another employee in the shipping department. The two had engaged in a fist-fight on the loading deck.

Sumlin understands the reprimand policy explained in the employee handbook. Class ''B'' reprimands stay on your record for 6 months and class ''A'' reprimands stay on your record for 1 year. Sumlin recalled that in 1987 Todd Bookout and Lee Smith both received class A reprimands for stealing company gas for Bookout's car and was of the opinion that Smith's reprimand was removed from the company record. At the time of the incident, Bookout was a shipping clerk and Smith was leadman on the night shift.

The union campaign began in mid-August 1988 and there was a company meeting in September chaired by Vice President Brad Smith. After the meeting Sumlin heard Bookout, Lee Smith, and Butch Johnson talking about the Union. Bookout and Johnson were saying they were going to ''whip somebody's ass'' if the Union tried to come in and whoever threw the first punch they were going to get their punches in also.

Sumlin knows Butch Johnson gets along well with supervisors but not with other employees. Johnson is prone to tell supervisors about what goes on at work such as the verbal assault Sumlin received the reprimand for. Johnson told Sumlin that he would tell Manager Loyd of the incident and he did.

On cross-examination Sumlin revealed that 2 weeks before the hearing Mack Wood called saying it was rumored that Sumlin would not testify in Wood's behalf. Wood told Sumlin if he testified against him rather than for him, Wood would contact Sumlin's probation officer and named who the probation officer was. Sumlin is on probation for possession of marijuana. Sumlin asked Wood how he got the name of the probation officer and Wood simply said, ''I got it.'' Sumlin was concerned that Wood might tell the probation officer that Sumlin was in Mollie's Bar the night of the company meeting about the Union in September. Sumlin's presence in a bar would violate his probation. Sumlin did not see Mack Wood or Allen Johnson in the bar but he did see employee Gary Carroll. Sumlin had talked to Wood earlier at the company party. The next time he saw or talked to Wood was the following Monday in the company parking lot after Wood was discharged.

Mack A. Wood Jr. testified he has worked for Lear for 4 years and was discharged Monday, September 26, 1988, by notice of a class A reprimand, citing threatening phone calls to three coemployees.

Wood worked in receiving, processing materials as it came off the trucks. He was supervised by Neil Brack a retired Air Force enlisted man. Randy Benton as head of the shipping department supervised both receiving and shipping.

In May 1987 Wood received a class B reprimand for reporting to work in a tanktop shirt and was sent home to change. Wood did not report back to work that day. Wood was disciplined with 2 days' suspension as a result of the incident. He felt it was unfair because two other employees, Billy Arnett and Salina Roland, also wore tanktops the same day. Wood complained that he was sent home and reprimanded whereas the other two employees were not disciplined at all. Manager Loyd told Wood that he was sent home to change because he lived on the base (Wood's wife is an Air Force person) but the other employees lived too distant off the base. As far as Wood knew his reprimand was never expunged from his record, although class B reprimands can be removed after 6 months. Wood also stated that the wearing of tanktops by men and women is an on again, off again, proposition. Currently employees can wear tanktops according to the dress code. In fact, at the time of his reprimand the posted dress code had tanktops marked through as if to remove them from the prohibited list of dress. Wood thought that nobody gets a class A reprimand, they just get fired. However, he knew that Lee Smith and Todd Bookout got a reprimand for stealing company gas rather than a discharge. Later Wood heard that Smith's and Bookout's reprimands had been removed from their records and he complained to management wanting his reprimand to be removed. His complaint went all the way to corporate in Oklahoma City, but they refused to remove Wood's reprimand in spite of the fact that Smith's and Bookout's had been removed.

In August 1988, Brad Smith came from corporate to the site to talk to all employees. Wood spoke to him asking about the removal of his reprimand. Smith told Wood that removing Lee Smith's and Todd Bookout's reprimands was a mistake. Smith added that it was his policy never to remove any reprimand, but Wood did not have to worry about his class B reprimand because it would not count against him.

Following failure of satisfaction on the reprimand Wood, during August, contacted Skinner of the Teamsters Union and set up a meeting. Wood and four other employees met with Skinner at the Holiday Inn. Wood and three others signed a union card that night and got cards to solicit employee signatures at work. During the campaign the Union handbilled employees several times. In late August, Wood

distributed a union handbill among the employees that explained what supervisors could and could not do. At this time while distributing in the breakroom, Wood joked with Brack telling him what he could and could not do as a supervisor. From the beginning, Brack talked against the Union at work and on the golf course. After break Brack told Wood the employees were ''F—king up;'' going to cause problems; that Lear would lose the contract; that Lear would pull out; Lear would not deal with the ''f—king union'' and everyone will be without jobs. Brack said Wood was stupid. Wood said he did not believe a big company like Lear would pull out just because a union came in. Brack just repeated that Wood was ''f—king up.'' For several weeks each time Brack and Wood played golf the union subject came up and Brack repeated the same tune.

On Friday during the campaign Butch Johnson came up to Wood, stood in his face, and said, ''any time.'' Wood knew what Johnson meant because there were rumors that Johnson was going to ''kick the ass of anyone in favor of the Union.'' Wood told Johnson, ''Today would be a good day.'' Two employees, Greg Spears and Mike Fowler, heard what Johnson said. Two other employees, Simms and Arnett, later told Wood that Johnson intended to fight Wood that afternoon after work. That afternoon as Wood was leaving work with his wife, Johnson hollered at them. Wood drove to where Johnson was and Johnson said he was going to kick Wood's ass, there was not going to be a union at Lear. Wood told Johnson, ''Butch you can't beat my ass and you know it.'' Wood left and did not return. Wood's leadperson, Phyllis Brantley, saw what transpired and told Wood to report it to Loyd but Wood figured it would do no good to report any conduct of Butch Johnson to Loyd. Brantley later told Wood that she reported the incident to Brack.

Later in September, Ken Waits came to the facility from corporate. Loyd told Wood to talk to Waits and he could learn why his reprimand would not be removed. Although Wood had already talked to Waits' boss, Brad Smith, he did go to see Waits on Wednesday, September 21, 1988. Waits was hostile toward Wood and the two argued back and forth. Waits finally said, ''When all of this shit is over with, I'm going to fire your ass.'' Wood asked, ''What do you mean?,'' but Waits said nothing more. Wood thought that Waits was referring to the Union.

The following day, Thursday, Rosie Camp, from corporate, gave a speech to all employees in the breakroom. Camp did not speak from a prepared text. He talked about the Union for about 30 minutes. He said for the past 25 years all the Teamsters presidents had gone to jail. Camp said the Company would have to negotiate but they could negotiate and negotiate and negotiate. They did not have to agree to any contract from any union. What happens is wages go down to zero. The wages could then go up or they could go down but he could guarantee they would not go up. The Company was paying as much money as they could pay. They are not going to pay anymore. There would be no more benefits. A question was asked about sick leave days. Camp said there is no sick leave days. The Company does not pay that. He said if a strike occurred all employees would be replaced. Some might get jobs back, but some employees would not. Lee Smith asked Camp if because Lear's facility is located on a Federal reservation do the employees have to join the Union if it is voted in. Camp replied, ''yes'' the employees would have to join.

On that same day the Company announced they were going to have a bar party at the Downtowner Inn from 4 to 7 p.m. for all employees. The day receiving employees got off at 4:30 p.m. that day but the Company let those who wanted to, leave early for the party. Wood left early to attend the party. All day-shift employees and management attended. The night shift came in about 6:30 or 7 p.m. which is their suppertime. Bookout, Lee Smith, and Butch Johnson from nights came in. Wood did not talk to Bookout, Smith, or Butch Johnson while at the party. He stayed until they closed at 8 p.m. then he and Allen Johnson went to Mollie's lounge. The two drank beer and shot pool. Wood did not see Sumlin in the lounge. Neither Wood nor Johnson made any phone calls from the lounge. Until they left about 11 p.m. they only drank beer and shoot pool. When they left Mollie's lounge they went to Billy Carroll's house to see why he did not come to the company party. They both visited with Carroll for about a half hour and Wood was home by 11:45 p.m. Neither Wood nor Johnson made any phone calls from Carroll's house.

The next day, Friday, Wood called in sick from too many beers the night before. There is no weekend shifts so Wood's next workday was Monday. Wood reported for work Monday about 7 a.m. Brack told him to see Loyd in the office. Wood went to Loyd's office and when he walked in Loyd told him he was terminated as of September 23. Wood asked what he was terminated for and Loyd told him to read the reprimand which he handed to Wood. Wood read the reprimand and told Loyd, ''This is bull, who the hell am I supposed to have threatened.'' Loyd said, ''I'm not going to tell you now. When the appropriate time comes, I'll let you know then.'' Loyd then told Wood to sign the reprimand but he refused to sign. Loyd told Wood to leave the building and not to come back. As Wood was leaving Loyd's office Brack came in with Wood's personal things and accompanied Wood to the outside. Once outside Brack told Wood that he had not known anything about the termination. Brack said, ''The reason you are getting fired is because of the Union. You are involved with that damn Union, I told you.'' Wood agreed with Brack and went on home.

That night at 10 p.m., while watching Monday night football, Wood received a phone call from Butch Johnson. Butch started laughing and asked Wood what he thought about his union now. Wood told Butch he did not think it was funny and told Butch he would ''kick his ass'' over it. Bookout apparently was also on the phone because he told Wood, ''You'll have to kick my ass too.'' Wood said that can be arranged too and hung up. Wood had told his wife to listen in on the extension phone and she did so. Although Wood did not know where Johnson and Bookout called from, they both work the night shift at Lear. Tuesday morning Wood called Loyd and reported the late night call from Johnson and Bookout. He told Loyd he did not appreciate their humor about his losing his job. Loyd said, ''Okay Mack, I'll tell them not to be calling no more while they are at work.'' On Saturday Wood played cards with a group including Brack. During the game Brack told Wood that he did not believe any phone calls were made and he did not think the Company would fire anyone over such phone calls anyway. Brack

said if Wood had not gotten involved with the Union he would not have been fired.

Wood had prior involvement with a union in late 1987 or early 1988. He received a phone call from some union representative who had gotten Wood's name from another Lear employee. The union man suggested that Wood was capable of organizing the employees. Wood told the caller that he would survey the employees for any interest in a union but he was still mystified that his name was used. He reported the incident to Brack that night by phone. The next morning Brack took Wood to the company offices. Wood related the incident to Loyd and other management people and gave them the name and phone number of the union man. Management cautioned Wood not to say anything just yet and they would tell Wood what to say when the union man called again. Later, management told Wood to tell the union man anything he wanted to. When the union man called again Wood told him the employees were not interested. There were no more phone calls. Wood informed Brack of the substance of the final phone call.

On cross-examination, Wood acknowledged that his affidavit does not contain the fact that his wife listened to the September 26, 1988 phone call from Butch Johnson. However, Wood did state that he told the Board agent that his wife had heard the phone conversation.

Wood also acknowledged that Brack spoke to him about employees stealing bowling balls and selling them after Mike Mercer had informed management that Wood, Brack, and Mike Fowler were engaged in the stealing. However, no management official from the front office ever questioned Wood about any incident of stealing. Board Agent Miller did tell Wood during investigation of the case that Ken Waits told her the reason Wood's class B reprimand on dress code was not removed from his file was the stealing accusation initiated by Mike Mercer. Further, Wood had received a counseling session from Loyd prior to his class B reprimand for cursing another employee during worktime in the facility.

Wood denied any coercive statements to Gary Sumlin about testifying for or against Wood in the instant case. Wood did admit that he was prohibited from using the base bowling alley for a year because he hit a patron in the bowling alley.

Medra Gorman Stanfield testified she had worked for Lear for 4-1/2 years. She is in the quality control department and works alongside the warehouse employees in both shipping and receiving. On the Tuesday or Wednesday prior to Wood's discharge, Stanfield heard Butch Johnson say, ''Somebody is fixing to get fired, and it's not just one.'' She recalled seeing Wood come out of Waits' office the day the employees were called in to talk to Waits. When Wood came out he was shaking and real upset and would not talk to anyone.

Stanfield was present when Camp spoke to all employees. He stood as he spoke and did not use a podium. Camp did not have anything in his hands as he spoke or as he gestured with his hands during the speech. She recalled Camp saying if the Union did come in, that everybody would start from zero. Salaries could go up or go down but Camp said they would not go up. Camp said they could negotiate and sometimes it took 6 years.

Allen B. Johnson testified he is now employed in civil service but he previously worked for Lear from March 1987 until November 16, 1988. Johnson recalled the week in September when Waits and Camp were at the facility when he attended the speech given by Camp. Camp spoke to all the employees in the break room giving all the negative aspects of a union and how it would hurt Lear. He said every president of the Teamsters for the last 25 years were imprisoned. Camp said when a union comes in all wages and benefits would be null and everything would go into negotiations. The wages could be negotiated up or down. If there was a strike the employees could be replaced.

Later that day, the Company had a party for employees at the Downtowner. Johnson arrived about 5:30 p.m. and stayed until it was over. At the party Johnson saw Lee Smith, Todd Bookout, and Butch Johnson who arrived later because they were on duty at the warehouse until 11 p.m. He did not speak to them other than to say hello. He and Wood then went to Mollie's lounge in Johnson's car. They drank a few beers and shot pool. Except for individual trips to the restroom the two were together all the time at the lounge. Johnson did not make any telephone calls from the lounge and he did not see or hear Wood make any phone calls. Both Johnson and Wood left the lounge about 11 p.m. and went to Billy Carroll's house to chat with him. While at Billy Carroll's house neither Johnson nor Wood made any telephone calls. After talking for awhile Johnson took Wood home. The next day at work Johnson was called into Loyd's office and either Waits or Camp was in the office also. Loyd asked Johnson if he had called the facility the night before to speak to Butch Johnson. He told Loyd he did not call and did not know anything about it. Loyd asked if he was with anyone the night before who made any phone calls to the facility. Johnson replied that he was not and asked Loyd who made any such accusations. Loyd would not disclose his source, he just said he had heard some things and wanted to question Johnson about them. Loyd did not mention the circumstances again.

Emory Gregory Spears testified he has worked at Lear for 4 years. He is a forklift operator and supervised by Neil Brack. During the union campaign in early September. Spears had a conversation about the Union with Brack. Spears was working on the dock and the Union was being discussed. Brack said, ''Lear-Siegler would not put up with that bullshit, that they didn't have to, and they didn't have to deal with the union. They would just, you know, give the contract up.''

A week later Gary Carroll, Billy Carroll, Terry Dunlap, Mack Wood, Neil Brack, and Spears were in the breakroom talking about the Union. Wood passed union leaflets to them and told them how much better it would be if the employees went union.

Spears, James Pauldo, Terry Dunlap, and Wayne Spivey lived a long way from the facility. The day of the company party the four asked Camp if he could tell them early what he was going to say at the party so the employees would not have to come back that night. Camp spoke to the four in Loyd's office. The four testified, ''Camp had a paper in front of him which he read from and then explained to us what he had read. He talked about the bad points of the Teamsters union and negotiations.'' Camp said the Company did not have to agree to anything. They could go on negotiating and never come to a settlement. Camp said wages and insurance would go to nothing and the Company and the Union would

start over. The Union would have to negotiate on what the employees got per hour and on insurance benefits.

Spears recalled that in the past employees have threatened one another and been disciplined with reprimands but none have been discharged.

Michael Wayne Fowler testified he has worked at Lear for 4 years in the receiving department under the supervision of Brack. During the union campaign, in mid-October, Fowler was on the receiving dock with Brack. Brack said if Wood had not been involved with the Union he would not have been fired. Brack added, if he had his way, he would fire a couple of people, and all of this union mess would be over with.

Fowler stated that there are two phones in the receiving office and one in the shipping office. All three phones are on the same line. The offices are about 100 yards apart.

Fowler has received two reprimands since he has worked at Lear. The first was a class B for using foul language towards a female employee. He got the second class B in June 1988 for cursing Butch Johnson, for carrying a forklift, with another forklift, and for leaving work early one day. Fowler was suspended for 3 days' without pay on the second. Neither reprimand was removed from his record although he had requested removal of the first before he got the second.

Susan Viola Wood testified she is in the Air Force and married to Mack Wood. They live in base housing at Warner Robins Air Force Base. Mack was discharged on a Monday. That night about 10 p.m. he answered the phone. After 10–15 seconds he tapped Susan on the leg and told her to get on the other phone. Susan testified, ''I went to the phone in our son's room.'' As she picked up the extension she heard laughter on the other end. Then the caller, who she recognized to be Butch Johnson, asked what Mack thought about the Union now and laughed some more. ''Mack told him it was not very funny and told him not to call our house anymore. Mack told Butch he would kick his ass if he kept calling the house.'' Susan Wood heard another voice on the phone but she did not recognize it. The unknown voice told Mack, ''Well, you would have mine to kick, too.'' Susan Wood then put the phone down and went into the other room to tell Mack to hang up the phone but he had already done so.

On Thursday of the week Mack Wood was discharged, Neil Brack called Susan Wood at the base hospital where she works. Brack said he was calling to make sure his friendship with her and Mack was intact and to check how Mack was doing. Susan Wood said under the circumstances Mack was doing fine. She then asked Brack why Mack had been fired. Brack told Susan Wood that Mack was supposed to have called the facility and threatened some employees. Brack added, ''But between just me and you, if he had stayed out of that damn union, he would have never gotten fired.''

Billy R. Carroll testified he worked at Lear from February to September 1988 as a forklift operator. Presently, he is employed by civil service on the base and retired from the Air Force.

Carroll recalls the day of the company party at the Downtowner in September 1988, although he did not attend. He knows Mack Wood and Allen Johnson and is friendly with both. Carroll was visited by Wood and Allen later in the evening around 10 p.m. Both were acting inebriated and talked about a lot of things. Wood said he had called the shipping section at Lear several times mentioning several names of employees he spoke to. Carroll only recalled Lee Smith's name. Wood said he was''F—king with them.'' Johnson said very little since he was in no shape to mention anything. The next day at work Carroll was talking with Brack. Brack said, ''Guess what Mack Wood did last night?'' Carroll asked what and Brack said, ''He called the shipping section and was harassing those guys, and doing all kind of things.'' Carroll replied, ''Yeah, he mentioned that last night. He came to my house last night, and he mentioned that.''

Ray Austin Martin testified he was employed by Lear in June 1988. He recalled the union campaign of September 1988 and an afternoon meeting in the receiving office chaired by Supervisor Brack. Wood, Fowler, and Spears were also present along with the other receiving employees. Brack said there will be a vote to decide how much interest there is among employees for a union. He stated that he did not want anyone talking union during duty hours but employees are free to talk union on breaktime, lunchtime, or after work. Someone asked about benefits and Brack said, ''I don't know. I guess they are going to be negotiated.'' Brack did not say the Company would not deal with the Union. Brack did not say the Company would lose its contract with the government because of the Union.

James Pauldo Jr. testified he has worked for Lear for 4 years in the receiving department as a forklift operator. Pauldo recalled the September meeting he, Spears, Dunlap, and Wayne Spires attended with Rosie Camp in Loyd's office. They met about a week before the company party at the Downtowner. Camp had scheduled a night meeting with all employees, which the four were unable to attend because of carpooling, so he saw them separately. When Camp met with the four employees, he said he was going to read from a prepared paper and that is what he did. No questions were asked by the four employees. As Camp read, he would lift his eyes away from the paper while he was talking. The entire meeting lasted about 15 minutes. Camp did not say wages would go to zero or nothing. He said the insurance was subject to change and that the Company would negotiate with the Union. Pauldo did not recall Camp saying the Company would negotiate and negotiate and negotiate but did recall the statement that Teamsters presidents for 25 years have gone to prison.

Benny Floyd McGee Jr. testified he had worked at Lear 4 years and was present at the meeting of all employees where Camp spoke about the Union in September 1988. Camp had papers before him which he said was his guideline. Camp said the Union and the Company will negotiate if the Union comes in. He explained that things go down and could work up. Camp said employees could possibly benefit from a union in terms of pay and other benefits but that was not absolute. McGee did not remember Camp saying, ''We are a government contractor on a fixed price contract, which is a given wage determination once each year. We don't have the luxury of raising the cost of our product to the public.'' McGee assumed Camp followed his notes when giving the speech albeit McGee did not read the notes to compare them to what Camp said.

Roosevelt F. Camp testified he is retired from the Air Force and has worked for Lear about 12 years as director of administration and industrial relations. In September 1988, he

came to the Lear facility in Warner Robins and gave a speech to all employees in the afternoon and earlier in the day to four employees in Loyd's office. On both occasions, before the speech he told employees that he was going to read verbatim from a prepared text so there would be no misunderstanding about what he said, then or later. Camp presented the written original copy of the speech he gave.

The first speech was given to four employees who had a transportation problem and Camp agreed to see them in Loyd's office. Camp read the speech and pursuant to the last paragraph asked if there were any questions. No questions were asked and the four left to go home.

The second speech was given to the remaining employees of the facility in the breakroom. Camp again read the speech and asked if there were any questions. The first question was, ''If the union wins the election, at the time they win, will the benefits of the employees be stopped at that point.'' Camp answered, ''No, the benefits and the pay that you presently have now will not be interrupted, or changed, until such time as the union negotiates whatever benefits and pay you get in the collective bargaining.'' Camp recalled that this question was raised by Supervisor Neil Brack. The second question was, ''After the union comes in, are our jobs guaranteed?'' Camp answered, ''No, your jobs, having the union does not guarantee your jobs any more than your jobs are guaranteed with LSI [Lear].'' Camp recalled that this question was raised by ''Lisa.'' There were no further questions and the meeting ended. Camp stated that he gave the speech verbatim without adding or deleting any words, other than his introduction telling employees he would read it verbatim.

Camp explained that he wrote the speech and rewrote it in Oklahoma City before coming to the Warner Robins facility. The ink changes he also made before arriving at the facility and decided not to have it retyped.

In preparation for the union campaign, Camp sent all supervisors literature entitled, ''Do's and Don't's of supervisory personnel during an organization campaign.'' In addition, Camp sent a letter to all employees explaining the Company's position. No other literature or information was distributed to supervisors or employees.

Neil O. Brack testified he has worked for Lear since December 1984 and was receiving foreman for 4 years. He is presently shipping foreman. Brack denied seeing Wood with union leaflets at work and generally denied the allegations in the complaint. Brack did recall a conversation with Wood as they walked outside the building after Wood was terminated. Brack asked Wood what happened and Wood said, ''They fired me.'' Brack asked, ''Why'' and Wood showed him the reprimand citing the three phone calls. Brack told Wood, ''Well, maybe you f—ked up.'' Nothing else was said. The subject of the Union was not mentioned. Brack denied talking to Fowler in October about Wood's termination. Brack did discuss the union in general terms with Wood while the two played golf but he could not recall any specifies of the conversations. Brack also talked to Wood about the Union at work during the union campaign but could not recall any statements he made about the Union. Although Brack could not recall any particular conversations at work he did tell Wood in his opinion the Union could not benefit employees at Lear. Brack also told Wood if he felt the union could do them any good that would be all right with him. Several employees asked Brack what would happen if the Union came in and Brack told them wages and benefits would be negotiated between Lear and the Union. Brack had no previous experience with unions so he did not really know how anything worked. Brack is a retired Air Force enlisted man with 30 years' service. However, Brack may have mentioned to Wood that he did not know of any contracts that Lear had that would unionize but he never told Wood that the Union would cause Lear to lose its contract with the government. Several employees in a group of about six asked Brack why there were no raises and Brack told them the contract has a set hourly wage and employees wages and benefits are paid from the set amount. He used a hypothetical 10-hour contract wage to explain an hourly working wage of $8.15 an hour and $1.85 an hour for benefits, insurance, and fringes. Brack told the employees that insurance alone was worth about $2 an hour.

Shortly after Wood was fired Brack was talking to Billy Carroll in the warehouse about Wood's discharge. Brack said Wood had allegedly made three phone calls to the employees in shipping although Wood denied making any calls. Carroll replied that Wood came over to his house and said he did make the phone calls. Brack felt that Carroll's statement was in confidence and did not tell management until the attorney was preparing for trial.

On cross-examination, Brack admitted that a statement in his affidavit was false because he did have numerous conversations with Wood about the Union at work and after work. Brack denied, however, that he knew Wood favored the Union although there were rumors that Wood was involved with the Union. Brack thought Wood favored the Union but he did not know for sure. With regard to conversations with employees about the Union Brack testified on redirect:

> Q. Did you know whether or not it was improper for you to have conversations with Wood concerning the Union?
>
> A. No Sir.
>
> Q. Did you know whether it was, or was not?
>
> A. I didn't know whether it was or wasn't.
>
> Q. When you made the [referring to the affidavit to the Board agent].
>
> A. Well, at that time, I did.
>
> Q. At that time?
>
> A. Yes Sir. At that day, when I made that there, I knew it was. [Again referring to the affidavit].
>
> Q. You . . . .
>
> A. That I should not have—I could have conversations with him about the union, but I couldn't—there were certain things that I couldn't say. You know, I could talk to him about the union, but I couldn't—there were certain things that I couldn't say.

As a result of the supervisory literature Brack got a week before Wood was discharged he did tell employees they could lose their jobs if they distributed union leaflets, or got union cards signed on company time. Brack made the same statement to Guy Harrison, stepfather of A. J. Johnson, an employee under Brack's supervision. Brack denied telling Harrison that Johnson could be fired for involving himself with the union.

Although Brack has not issued any class A reprimands to employees for threatening other employees or for stealing

company gas he is aware that some employees have received such reprimands. He is also aware that none of the culpable employees were discharged for their acts but he was unsure whether the reprimands were later removed from the employees files.

Brack did not recall asking any questions during the speech Camp gave to all employees in September 1988. Brack testified:

> Q. Do you recall asking a question when Mr. Camp made a speech to employees there on probably, Thursday, September the 22nd, when Mr. Waits and Mr. Camp were here because of the union campaign?
>
> A. Sir, I do not remember asking a question. If they told me I asked a question, then I don't know what it was.
>
> Q. They told you—who told you, you asked one?
>
> A. Mr. Camp said that I asked a question, and I don't remember what I asked him.
>
> Q. You don't remember asking a question?
>
> A. No, Sir.

Brack stated that the usual language in the warehouse can be vulgar or raunchy just as any other workplace. Although he did not have first-hand knowledge, Brack knew there was hard feelings between Wood and the night-shift shipping employees, Butch Johnson, Todd Bookout, and Lee Smith. Brack acknowledged that a pay phone exist in the warehouse close to the shipping area and it's available to all employees at all times.

Francis Lee Smith testified he worked 4 years with Lear, leaving November 1988 for civil service with the Air Force. Smith recalled the evening of September 22, 1988, while working in shipping at Lear. The other night-shift employees were Butch Johnson and Todd Bookout. About 9 or 10 p.m. a phone call was taken by Butch Johnson. After the call, Butch told Smith and Bookout they would not believe what Allen Johnson had just told him. Allen Johnson had just said that if Butch wanted to fight Mack Wood this was the best night to do it. On hearing this Butch hung up the phone. About 5 minutes later another call came in and Butch answered with Smith listening in. The caller was Mack Wood. Wood told Butch he would meet him anywhere and Butch said, ''No.'' Smith hung up the phone. Twenty to thirty minutes later, the phone rang again and Butch answered. It was Wood calling again. Smith took the phone from Butch and asked Wood to turn down the music. Wood said it was not a radio it was a band and ''I can't turn it down.'' Wood said that Butch had hurt his pride out in the company parking lot and that's all a man has in this world, is his pride. Wood said that Smith and Bookout could accompany Butch to ensure there was no knives or guns, just a clean fight. Smith told Wood he was being put in a bad situation because he would have to say something about the phone calls. Wood said he did not care if Smith told Loyd because even if he was fired it is a matter of a man's pride. Wood told Smith if he had a problem with Wood's suggestion he could take Butch Johnson's place. Bookout reported to Smith that Wood called another time and asked Bookout, ''Don't you want some of me, too.'' Bookout answered, ''No'' and hung up.

Smith attempted to report the phone calls immediately to Loyd but was unable to reach him until later in the evening. The following day Smith gave a statement to Loyd reporting the substance of the phone calls.

Smith stated that on the night of September 26, 1988, he was using the only phone in the shipping department about 9:50 p.m. He was talking to his wife who had just returned from a trip to Alabama. While he was talking, Butch Johnson and Todd Bookout were present with him in the shipping office and neither of them made any phone calls to Mack Wood.

On cross-examination, Smith acknowledged that he knew Butch Johnson and Wood had a confrontation in the parking lot a few days before the company party and the phone calls. Smith and several employees were in the shipping office talking. Jerry Harrelson was present and afterwards Harrelson told Wood that the shipping employees want to ''kick the butt'' of anyone who favors the Union. Smith said the shipping employees had not said what Harrelson related. Later Butch Johnson ''called out'' Wood as Wood was leaving work with his wife and child. Butch Johnson told Smith of the incident the next day.

Jerry L. Johnson (Butch) testified he has been employed by Lear for 4 years. Johnson worked nights in shipping usually 2:25 to 11:10 p.m. Tuesday, September 20, Johnson knew there was a rumor in the warehouse that he had said he would kick anybody's ass that joined the Union. That day Wood asked Butch if he had made such a statement. Butch told Wood he had not made the statement but told Wood that if forced into something he did not want any part of he would try to do something about it. Wood said, ''Anytime you want to kick my ass, you just let me know.'' Later that day after further discussion Butch Johnson and Wood agreed to meet in the parking lot after work. Johnson waited in the parking lot but Wood opted to take his wife and kids home. Johnson told Wood he would wait for him to come back.

On September 22, 1988, about 9:30 p.m. Butch answered the shipping phone. It was Allen Johnson calling. A. Johnson said if Butch wanted to kick Wood's ass, this would be the night, to do it. Butch denied that he threatened to kick any employee's ass and hung up the phone. Within 10 minutes Wood called the shipping office. Butch again answered the phone and Smith listed in. Wood said he would kick Butch's ass and to meet him tonight or any way Butch wanted to do it. Wood said if he had to he would go to Butch's house and kick his ass. Butch told Wood that he had his chance when Wood told him to meet in the parking lot after work. Wood called Butch a coward. Butch replied that he may be but Wood had his chance and ''that's all he's getting.'' Later another call from Wood came in. Smith answered and Butch listened. Wood said he was going to kick Butch's ass and Smith said, ''No, there is not going to be any fight.'' Wood then asked Smith if he wanted some of Wood. Smith told Wood he was drunk and get somebody to take him home. Wood continued and Smith hung up the phone. When the phone rang again Bookout answered and Butch listened in. Wood asked who answered the phone. Bookout said it was he. Wood asked Bookout if he wanted some of Wood, too. Bookout said, ''Listen to you, boy.'' Wood replied, ''I'll kick your ass, too.'' Bookout hung up the phone.

After shift that night Butch went home and called Roosevelt Camp and reported the phone calls from Wood. He also reported the phone calls to Ken Waits. The following Monday Butch worked as usual until around 11 p.m. Butch

Johnson denied making any phone calls to Wood that evening or talking to anyone at Wood's house. Butch stated he did not know Wood's phone number.

Sometime later, while working, Butch Johnson and Allen Johnson had words between them. At lunchtime the two went off base and settled it by fighting. Neither employee was disciplined for fighting.

Todd Allen Bookout testified he worked the night shift in shipping at Lear in September 1988. On September 22, 1988, he was working with Butch Johnson. Around 8:45 p.m., Butch answered the phone. Butch said it was Allen Johnson saying that if Butch wanted to kick Mack Wood's ass, tonight would be a good night. A second call was taken by Butch and Lee Smith listening in. It was Mack Wood calling. After the call Smith said Wood wanted to kick Butch's ass anywhere he chose or at Butch's house if necessary. A third call came in from Wood. Smith answered the phone and shortly told Wood he sounded like he had too much to drink and get someone to take you home. Wood continued his desire to whip Butch Johnson and Smith hung up the phone. About 20 minutes later the phone rang again. Bookout answered it. Wood was calling and asked who answered. Bookout said it was he and Wood said, ''I heard you want some of me, too.'' Bookout said, ''Listen at you, man,'' and Wood replied ''Come up here and kick my ass, or I'll kick yours. Meet me somewhere.'' Bookout hung up. Smith, Butch Johnson and Bookout attempted to contact Camp, Waits or Loyd immediately but were unable to do so until later. The employees were told to meet with management the next morning. The following day each employee gave a written statement about the phone calls to Loyd. The next work day was Monday, September 26 and Bookout worked as usual. From 9:30 p.m. to closing time, approximately 11 p.m., Bookout, Smith, and Butch Johnson were finishing up the nights paperwork and playing cards in the shipping office. Bookout did not place any phone calls to Wood's house nor did he see or hear Smith or Johnson place any such calls.

William Ray Loyd testified he is site manager at Lear. There are 23 employees in receiving and shipping. Fourteen receiving employees on days, six shipping employees on days, and three shipping employees on nights. Occasionally a receiving employee will work at night on a temporary basis. Loyd explained and confirmed the prior discussion items in Mack Wood's personnel file (R. Exh. 2) and the class B reprimand given to Wood in May 1987. The reprimand was the first received by Wood since he was employed.

On September 23, 1987, Loyd received three written statements from night shift shipping employees that Wood had called them at work the night of September 22, 1988. Wood had threatened each of them in separate phone calls. Loyd reviewed the statements with Waits and Camp and interviewed Allen Johnson on September 23. Johnson denied any knowledge of phone calls and denied that he had placed a phone call. Loyd did no other investigation of the matter. He, Waits, and Camp decided that the seriousness of the matter required termination and discharged Wood effective September 23, 1988. When Wood came to work September 26, Loyd gave him the discharge papers. He asked Wood to read the papers carefully and then make any comments he had. After reading Wood asked who he was supposed to have threatened. Loyd responded that Wood knew who and asked if Wood had any other comments. Wood said he had nothing to say. Loyd asked for Wood's badge and identification but Wood did not have either on him. Loyd told Wood he was restricted from coming into the work area again. Wood left the premises.

Loyd did not see Wood again until both appeared at the unemployment compensation hearing. As the two were leaving the building after the hearing Wood approached Loyd. Loyd testified:

> Well, Mack Wood left the building first. It was raining outside, and most of the people were still, you know, hanging around close by where they wouldn't get wet. And Mack Wood was on the porch smoking a cigarette, I believe. And I went on by him, and went down the steps and out into the parking lot to go to my car. And then Mack Wood came up behind me real fast, and he—he was very angry. And he looked me in the face, and he said, ''I want you to know that you are a conniving, lying, low-down son-of-a-bitch.''
>
> And I said, ''Mack, get away from me.'' I said, ''Stay out—just get away from me, I don't want anything to do with you.'' And he said, ''I'm going to get you, old man. I'm going to get you good, and I'm going to get your boys.'' And as I was walking away, he said, ''I'm coming back. I'm coming back. I'm coming back.'' And I walked on, and got in the car. That's what he said.

On cross-examination, Loyd admitted that he knew Butch Johnson and Allen Johnson engaged in an argument during lunchtime in the warehouse and ultimately had a fight off the premises. Loyd did not discipline either employee because the fight occurred during nonduty hours and it was outside his area of responsibility.

Loyd explained that employees Smith and Bookout were not discharged for the gas stealing incident because of extenuating circumstances. The two had run out of gas outside the facility. They pushed their car into the facility and took enough gas to get the car running again. It was a small amount of gas and they both said they intended to pay for it. Both employees were suspended several days without pay. Loyd later recommended that the reprimand be removed from Smith's and Bookout's personnel file and the removal was approved. Loyd also recommended that Wood's first reprimands be removed from his file but the removal was not approved.

Loyd does not have the authority to discharge employees directly. He makes a recommendation to his supervisors and they approve or disapprove. Mack Wood is the only employee Loyd has recommended for discharge.

In December 1988, Sumlin was summoned to Loyd's office for questioning about events of Thursday, September 22, the night of the company meeting of employees. Sumlin stated that he had been with Mack Wood later in the evening at Mollie's bar. He, Wood and several others were sitting around a table. Wood had been on the telephone and came back to the table slinging a quarter on the table saying, ''You Mother-F—kers call them, I can't get them to fight me.'' Sumlin did not respond to Wood's statement he just got up and went to play pool.

Kenneth D. Waits testified he is an area tech representative with Lear. The Warner Robins facility was within his area of responsibility and Loyd reported to him. Waits recalled a request from Loyd to remove the class B reprimand from Woods file in April 1988. At that time he also had a statement Loyd had sent to him accusing Wood of stealing Government property. Waits decided not to remove the reprimand in face of the accusation and directed Loyd to report the statement to Government authorities. When Waits was new to the job, i.e., prior to April 1988, he had a recommendation from Loyd to remove two reprimands from employees files. After researching the procedure, he granted the requested removals. As Waits progressed in his employment he thought less of removing reprimands and more of the lesson that a reprimand teaches.

With regard to Woods' discharge, Waits said that the failure to interview Woods for his side of the story was not a deficiency. Whether Woods denied making the phone calls or not it was three against one and Wood would have been discharged anyway. Waits did not recall Loyd's interview with Allen Johnson entering into the consideration of Woods discipline as a result of the threatening phone calls.

Analysis and Conclusions

The General Counsel's complaint alleges several counts of independent violations of Section 8(a)(1) of the Act involving threats against employees engaged in union activity or employees in sympathy with the Union's organizational campaign.

The complaint also alleges an unlawful discharge. The General Counsel contends that Mack Wood was the leading union supporter and Respondent discharged him because of his union activity rather than its asserted reason of intimidation of other employees. The General Counsel argues discrimination on the part of Respondent to support his complaint allegation of a violation of Section 8(a)(3) of the Act. The determination must rest on Respondent's motivation in discharging Wood inasmuch as the conduct relied on by Respondent for the discharge did in fact occur. Thus, the causality test of *Wright Line*, 251 NLRB 1083 (1980), is applicable.

With regard to the General Counsel's burden in Wood's discharge, he must first establish a prima facie case of discrimination and he must preponderate on the basis of all the evidence. Respondent must then go forward with its evidence of the asserted reason for the discharge and if its evidence is sufficiently proven to negate the presence of protected activity in the discriminatee, the General Counsel's prima face case is rebutted and the General Counsel has failed to sustain his burden of proving discrimination.

A finding that Wood was not properly discharged for cause would not, standing alone, establish the discharge as violative of Section 8(a) (3) as alleged. The motivation for the discharge must be determined and most often is founded on inferences drawn from the evidence of record.

The General Counsel's proof of a prima facie case must be supported by findings of union activity on the part of the discriminatee, Respondent's knowledge of that union activity, Respondent's animus toward the Union, and that the discriminatee's union activity was a factor in the decision to discharge.

The General Counsel's complaint alleges that Supervisor Brack threatened employees with loss of jobs, loss of benefits, closure of the facility, and the futility of unionization if the Union was voted in.

Threats

Several witnesses testified to statements made by Brack during the campaign in informal employee groups, both at and during nonwork hours off the facility. It is not unusual for a union orgainzing campaign atmosphere to birth and nurture individual comments about union, both pro and con. The campaign at Lear was no exception. Although Brack denied making any statements to employees alleged as violations he did admit to discussions about the Union with employees under his supervision. Brack also expressed ignorance of unions and how they worked but he displayed a considerable common sense knowledge of the economics associated with unionization, particularly that of a Government contractor. Indeed, he assembled employees in small groups in his office in an attempt to show the employees that simple arithmetic and a constant hourly wage would make unionization unprofitable for employees. Despite his protestations to the contrary, reasonableness, and plausiblility support the statements attributed to him. I credit the testimony of Wood and Spears with regard to violative statements made by Brack to small employee groups at work and at play. I do not credit Brack's terse denials that are simply negative responses to critical and ultimate questions. Moreover, Brack explained that in conversations with subordinates considered friends he maintained a certain confidentiality of the subject matter. In my view he expected that same confidentiality when he expressed his opinions about unions and Government contractors and therefore was more open than he otherwise might have been. Further, it is clear to me that Brack had made several statements against the Union at a time when he did not know the limitations placed on supervisors by the law. Witness Martin's testimony, relied on by Respondent to counter Brack's alleged violative statements made at work, is clearly not the same discussion group testified to by Spears and Wood. Although a witness' interest in the outcome of any trial is a factor to be considered in assessing credibility it is not a controlling factor and in any event it can be applied with equal vigor to both parties. Here, I conclude and find that Brack did, in an attempt to educate his employees, make statements violative of Section 8(a)(1) of the Act. Albeit, I do not think that Brack was intent on making threats to the employees to unlawfully defeat the Union's organizing efforts, the effect is the same. The statements made by Brack would reasonably tend to interfere with employees' free exercise of their rights under the Act. Accordingly, I further conclude and find that Respondent has violated Section 8(a)(1) of the Act as alleged in complaint paragraphs 7, 8, 9, and 10.

A second allegation in complaint paragraph 8 deals with the speech given to employees by Director of Administration and Industrial Relations Roosevelt Camp. Several employees who heard the speech testified to its contents and manner of presentation. Camp said he read the speech verbatim from a typed text. Two employees stated that Camp did read the speech but clearly they did not compare the text with what they heard. Two other employees stated that Camp did not read the speech but they too did not compare what they

heard with the text. Testimony that Camp did not appear to be reading is subject to more than one inference and not helpful to me. One witness said Camp stated that benefits would go to *zero* when the Union came in. Another witness said Camp read to employees that wages and benefits would go to nothing when the Union came in and then explained what he had read. A third witness said Camp read the speech but did not say *zero* or *nothing* when referring to wages or benefits, however, Camp did say that for 25 years the Teamsters officials had gone to prison. A fourth witness said Camp had papers before him as a guideline. What actually transpired is somewhere in between the various versions. If Camp did read the text verbatim he told the employees: The Union would not get more money from Lear because Lear does not get more from the Government; I know of a contract that has changed contractors each year for 4 straight years; a new contractor has an option of avoiding the Union by not hiring any of the predecessor's employees or if he must do so, hiring only a few as necessary so they are a small percentage of the work force under the contract; under the Union all benefits would have to be negotiated, starting from zero and asked the question,''Do you have any idea how many Teamsters presidents have gone to prison in the last 25 years?'' Thus, Camp's version of his speech is not at complete odds with the employees' version. The employee witnesses did not recall any questions following the speech by Camp including any by Supervisor Brack to whom Camp attributes a question designed to repudiate the speech reference ''starting from zero'' relative to Camp's remarks on employee benefits if the Union prevailed in the election.

Although I do not discredit, the General Counsel's witnesses, I cannot fully credit their recall of Camp's remarks. I do credit General Counsel witnesses Stanfield and Spears, in that Camp stood without a podium when speaking and that he read portions of the speech then explained what he read. I also credit Respondent witnesses McGee and Pauldo, in that Camp had papers before him as a ''guideline'' and that Camp made a statement that Teamsters presidents for the last 25 years have gone to prison. I do not doubt that Camp read the text of the speech to the assembled employees, but I do not credit his testimony that he read it verbatim and added nothing. Witnesses from both sides genuinely recall portions not found in the written text or stated differently from that found in the written text. In my view, the dissimilarities are not adequately explained simply by difference in recall. I find it to be more plausible that Camp did read and then explain portions of the speech extemporaneously. The written text contained a question, without answer, about Teamsters presidents. The witnesses recall a statement, without a question, ''all.'' I credit the employee witnesses on this point and conclude and find that Camp did vary from the written text when making the speech to the assembled employees.

In addition, Camp testified that a (critical) question was asked after the speech by Brack. Brack, however, only recalled that subsequent to the speech, Camp told him that he had asked a question. I credit Brack's recall that he did not ask any questions following Camp's speech, to the employees. I do not credit Camp's testimony on this point and conclude that the substance of the question was not raised before the employees assembled to hear the speech. Thus, that portion of the text relating to ''starting from zero'' was communicated to employees as written.

An employer is free to communicate his general views of unionism or his specific views about a particular union to his employees, so long as his communications do not contain threats of economic reprisals against those employees. Employers may, in the course of communications to its employees, predict the economic effects he believes unionization will have on his company but the prediction must be accompanied by objective facts that tend to establish any substantial likelihood of their occurrence. The thrust of the proscription is simply that an employer may relate consequences of unionization that are outside of his control but he cannot threaten economic reprisal to be taken solely on his own volition.

In my view, here, Respondent has gone beyond the permissible limits of expressing his views, arguments, or opinions to his employees. As the Board frequently finds, employees are particularly sensitive to statements that hint at plant closings and/or loss of production contracts, both of which are equatable to coercive threats of loss of employment in the event of unionization. The speaker is responsible for his language used and the effects it has on his employees. Any employer can avoid coercive statements simply by avoiding conscious overstatements he has reason to believe will mislead his employees. Although Respondent attempted to base the predictions in its speech on government action in the event of unionization, the examples posed and the supporting language make it all too clear to employees: A union could not get employees more because Lear as a Government contractor has no latitude for changes in money, benefits, and working conditions; the Government will not give more money; Lear individually will not give more money; if the Union struck to get more the Government would terminate the contract; any new contractor could avoid hiring Lear employees; when the Union comes in existing benefits would go to zero and parties would negotiate new benefits. Respondent's speech message is not supported by objective facts but rather is based on pure conjecture and evinces an intent approaching a completely intractable position toward the Union and collective bargaining. I therefore conclude and find that Respondent has coerced, restrained, and interfered with employees' free exercise of their rights guaranteed by Section 7 of the Act.

Paragraph 12 of the General Counsel's complaint alleges a threat of discharge made to the parent of an employee by Supervisor Brack. Although Brack denied making such a threat, the General Counsel did not present any evidence of the threat. Therefore the General Counsel has failed to sustain his burden of proof. I shall dismiss the unsupported allegation of the complaint.

Discharge and Threat of Discharge

It is uncontroverted that Mack Wood made the initial contact with the Union and set up the first meeting. Wood and several others signed union cards and got a supply to solicit among the employees. Wood solicited signatures and distributed a union handbill among the employees. Albeit Brack, Wood's supervisor, denied seeing Wood with union handbills Brack felt that Wood was in favor of the Union. Brack's opinion of Wood's prounion stance was formed as a result of the numerous conversations between the two about the

Union. Brack consistently talked against the Union with the employees whereas Wood talked in favor of the Union. I have little trouble concluding that Brack knew Wood favored the Union. In addition several procompany employees including, Butch Johnson, knew Wood favored the Union to the extent that adverse rumors of Wood's prounion sympathy were circulated in the warehouse. The employee witnesses testifying about the union campaign were considerably less candid when asked about the personal preferences of themselves or others. With only 23 employees in the warehouse, supervised daily by two front line supervisors, it is only reasonable to assume that management was aware of Wood's union activity and union sympathy. The assumption is bolstered by the undenied fact that Ken Waits, one of two corporate heads visiting the facility during the union campaign in September specifically to campaign against the Union, threatened to discharge Wood, ''When all of this shit is over with.'' Waits' reference could only be to the union campaign and Wood's personal involvement. I conclude and find that Respondent knew of Wood's union activity and that Ken Waits on September 21 threatened to discharge Wood because of his union sympathy and activity on behalf of the Union in violation of Section 8(a)(1) of the Act.

On Thursday, September 22, the Company threw a party for employees at a downtown motel following an antiunion speech at the facility. After the party, Wood and Allen Johnson went to a local bar to continue drinking beer or liquor. While at the bar Wood made several phone calls and Allen reportedly made one call to the three night-shift employees at the facility. Both Wood and Allen during the phone calls told the night shift-employees Wood was going to whip their individual asses. The night-shift employees reported the phone calls to management.

The following day, Friday, Loyd called Allen Johnson to the office and asked if he had made any phone calls to the night-shift employees the night before or if he had been in the presence of anyone making such calls. Johnson pleaded ignorance of the calls and Loyd ended the interview. Wood was not working that Friday. That same morning Loyd recommended Wood's discharge to Waits and Camp. The three considered the circumstances and decided on immediate discharge. Waits stated that Loyd's interview of Allen Johnson was not known to him nor was it considered in Wood's discipline. Wood was given a class A reprimand for intimidation of employees and was cited for having a prior class B reprimand in his record dated April 1987. Wood, as a result of the class A reprimand, was discharged, effective that same day. Loyd had no explanation for the failure to interview Wood about the phone calls as he had done with Allen Johnson. Loyd stated that Wood was the first employee he had recommended for discharge as site manager at the facility. Loyd was ambivalent when asked if the discipline would have been less if the class B reprimand of 1987 had been removed from Wood's file previously.

When asked about the failure to interview Wood prior to the discipline, Waits said an investigatory interview with Wood was not necessary because three employees had made the report accompanied by written statements and that constituted three against one. Waits added that Wood would have been discharged even if he had denied making the phone calls in an investigatory interview.

Without regard to whether Wood made the phone calls or not several factors of the discharge sequence are subject to discussion. Although Loyd began an investigation into the reported phone calls by interviewing Allen Johnson, he did not continue the investigation with regard to Wood. Loyd's action is most reasonably explained by Waits' stated efficacy of any investigation, since Waits is Loyd's superior. Wood was thusly denied the preliminary procedure accorded to Allen Johnson. The company rules establishing bases for employee discipline divides reprimands into class A and class B. Class A reprimands normally carry immediate discharge with their issuance. The class B reprimands normally accumulate to three with the third followed by discharge. The rules ''note'' that immediate discharge concurrent with a class A reprimand may be obviated by extenuating circumstances and that a class B violation may be so serious that immediate discharge becomes necessary. Although not written in the rules, the company practice, as shown on its reprimand forms, is to suspend employees for several days with class B reprimands. The rules also provide for voiding reprimands after 12 months in the case of class A and 6 months in the case of class B. The voiding procedure is initiated by the supervisor of the affected employee. As the program manager for the facility, Waits would decide on any voiding of reprimands, or not. The Respondent stipulated that Lee Smith and Todd Bookout got class A reprimands for stealing gas and they were later removed from the employees' files. Waits' explanation for not removing Wood's class B reprimand, to wit, *suspected theft* of bowling balls and the resultant appraisal of disloyalty is incongruous with the removal of class A reprimands for *actual stealing* of company gas by Smith and Bookout. The written enumeration of class A violations includes *fighting on company or customer property*. The class B listing includes *coercion or intimidation of another employee*. Wood's class A reprimand decided by Loyd, Waits, and Camp was entitled, ''intimidating—threatening physical harm to LSMSC (facility) employees.'' Past reprimands for threatening coworkers with physical harm were class B and included 2 or 3 days' suspensions. Respondent in brief argues that disciplinary sanctions are imposed pursuant to the Company's progressive discipline policy. However, it is clear from the record evidence that in Wood's case the Company's discipline policy is regressive. The written rules defining violations and the past practice were not followed. Respondent's variance from its rules and past practice cannot be explained by difficulty of assessment or lack of clarity in the rules. The conduct complained of was easily labeled ''intimidation'' and the rules are abundantly clear: actual physical harm, i.e., *fighting* is a class A violation; threats of physical harm, i.e., *intimidation* is a class B violation. The only explanation for the variance appears to be that noted by Respondent in argument: with the exception of the termination (Wood's) all disciplined of employees occurred prior to any union activity at the Respondent's facility. Therefore, the change in company policy and variation from past discipline practices to discipline Wood was precipitated by Wood's union activity. Respondent seized on the incident of the phone calls, changed its rules for Wood's discipline, and discharged Wood on September 23.

I conclude and find that Respondent's real motivation for Wood's discharge is unlawful and is abundantly supported

by coincidence in union activity of Wood and his discharge, disparity of treatment of Wood in relation to other employees, variance from the Respondent's normal and past routines of discipline, and an implausible explanation for the ultimate disciplinary action of discharging Wood. Accordingly, I conclude and find further that Respondent has violated Section 8(a)(1) and (3) as alleged in the General Counsel's complaint.

CONCLUSIONS OF LAW

1. By threatening employees with economic reprisals for engaging in union activity, Respondent has violated Section 8(a)(1) of the Act.

2. By threatening employee Mack Wood with discharge for engaging in union activity, Respondent has violated Section 8(a)(1) of the Act.

3. By discharging employee Mack Wood because of his union activity, Respondent has violated Section 8(a)(1) and (3) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The complaint allegation of a threat of discharge to a parent of an employee was not sustained by the General Counsel.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I have found that Respondent discriminatorily discharged Mack Wood in spite of the fact that Wood was an untrustworthy witness. My finding is based on the credible evidence in the record from other witnesses, the failure of Respondent's evidence to persuade or the discrediting of Respondent's witnesses and the objective evidence in the record offered by both parties.

I only credited Wood's testimony when corroborated by credible witnesses or when uncontroverted. Wood's demeanor on the stand was transitory to the extent, when testifying about others speech or actions he was vehement and mentally occupied with the events, however, when testifying to his own conduct he exhibited a marked change in his personality coupled with a self-imposed and temporary reticence. Wood throughout the trial denied making the critical phone calls or engaging in any conduct which would, in his mind, constitute an admission against his self-interest. His denials were reuttered in the face of contrary testimony of uninterested witnesses friendly to Wood. His calculated and evasive testimony was so transparent I can credit only a small portion of his testimony given to support the General Counsel's complaint allegations. Although Wood's credibility is sufficient cause for concern his disregard for fundamental rules of fair play and the judicial procedures established by the Board for processing unfair labor practices is paramount in my mind.

Without regard for the party calling, witnesses must be completely free to testify truthfully and without fear of any reprisal from anyone. Threats against witnesses to induce favorable testimony or to suppress unfavorable testimony is wholly reprehensible and cannot remain unremedied. Witness Sumlin exposed in his testimony a threat from Mack Wood to influence the court ordered probation of Sumlin if he refused to testify in Wood's behalf. Sumlin was visibly shaken while testifying but he was not deterred from telling the truth. His demeanor under the circumstances was laudable and I fully credit his testimony. Wood's denial of any threat to Sumlin was completely in character for him and wholly discredited. In my view, Wood's actions must be met with ultimate sanctions, for to do otherwise would ensure the inefficacy of the Board's processes and the destruction of its public mission. I am constrained to deny Wood both the backpay and reinstatement he would otherwise be entitled to. In the past, the Board has protected its procedures against disruptive or ignominious practices by fashioning unusually remedies or offering no remedy at all. See *Uniform Rental Service*, 161 NLRB 187 (1966).

I am aware that by refusing Wood his normal remedy I am effectively leaving Respondent's violation of Section 8(a)(3) of the Act without a lawful remedy and thus creating a windfall for Respondent. Notwithstanding that, I have benefited Respondent by my finding I cannot in good conscience award the machinations of Mack Wood evinced in this record.

On these findings of the fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Lear-Siegler Management Service Corporation, a wholly owned subsidiary of Aerospace Products Holding Corp., Warner Robins, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with economic reprisals because they engage in union activities.

(b) Threatening employees with discharge for engaging in union activities.

(c) Discharging employees for engaging in union activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Expunge from its files any references to Mack Wood's discharge or the class A reprimand issued concurrently on September 23, 1988, and notify him in writing that this has been done and that evidence of this unlawful discrimination will not be used as a basis for future personnel action against him or communicated in any way to any person.

(b) Post at its offices in Warner Robins, Georgia, copies of the attached notice marked ''Appendix.''[3] Copies of the notice on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's authorized

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.